

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KAH'SUN CREATOR ALLAH,

Plaintiff,

-v-

9:08-CV-1008 (NAM/GHL)

**TIM KEMP, Office of the Mental Health Unit Chief, Upstate
Correctional Facility; WAYNE CROSIER, Mental Health
Social Worker, Upstate Correctional Facility,**

Defendants.

APPEARANCES:

Kah'sun Creator Allah
99-A-2660
Southport Correctional Facility, P.O. Box 2000
Pine City, New York 14871
Plaintiff, *pro se*

Hon. Eric T. Schneiderman, Attorney General for the State of New York
Charles J. Quackenbush, Esq., Assistant Attorney General
The Capitol
Albany, New York 12224
Attorney for Defendants

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff, an inmate in the custody of the New York State Department of Correctional Services, brought this action for declaratory and monetary relief under 42 U.S.C. § 1983, alleging that defendants' indifference to his serious medical needs deprived him of his rights under the Eighth Amendment. Defendants' motion for summary judgment (Dkt. No. 43) was referred to United States Magistrate Judge George H. Lowe pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c). Magistrate Judge Lowe has issued a Report and Recommendation (Dkt. No. 50)

recommending that any claims against defendants in their official capacities be dismissed on sovereign immunity grounds, and that defendants' motion for summary judgment otherwise be denied. Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court reviews *de novo* those parts of a report and recommendation to which a party specifically objects. Failure to object to any portion of a report and recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993).

Plaintiff has not objected to any aspect of the Report and Recommendation. Defendants object to so much of the Report and Recommendation as recommends: (1) that the Court exercise its discretion and overlook plaintiff's failure to comply fully with the local rules; (2) that summary judgment dismissing the complaint against Kemp on the ground of lack of personal involvement be denied; (3) that summary judgment on qualified immunity grounds be denied; and (4) that summary judgment on the Eighth Amendment medical indifference claim be denied.

Upon *de novo* review of the entire record, including defendants' objection (Dkt. No. 51), the Court adopts Magistrate Judge Lowe's reasoning and conclusions in all respects.

It is therefore

ORDERED that the Report and Recommendation (Dkt. No. 50) of United States Magistrate Judge George H. Lowe is accepted; and it is further

ORDERED that all claims against defendants in their official capacities are dismissed and that defendants' motion for summary judgment (Dkt. No. 43) is otherwise denied.

IT IS SO ORDERED.

February 22, 2011
Syracuse, New York


Norman A. Mordue
Chief United States District Court Judge